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CURRENT DECISIONS

ATTORNEY AND CLIENT—LIEN OF ATTORNEY—SET OFF.—The defendant recovered a judgment against the plaintiff on October 27, 1916. A bank recovered a judgment against the defendant on October 28, 1916, and later assigned it to the plaintiffs. This action was against the defendant and its attorneys to set off the judgment which they had acquired against the one they owed. *Held*, that the set off should be decreed but subject to the attorney's lien. *Beecher v. Vogt Manufacturing Company* (Jan. 6, 1920, N. Y. App.) 62 N. Y. L. J. (Feb. 10, 1920).

The opinion contains a very able and interesting discussion of the "ancient judicial controversy" as to whether the right to set off judgment against judgment is superior to the attorney's lien upon a judgment. The result is equitable but only New York decisions were discussed and it should be noticed that there are some well reasoned cases *contra*. See *Wildung v. Security Mortgage Co.* (1919, Minn.) 173 N. W. 429, (1919) 29 YALE LAW JOURNAL, III, and cases there cited.

ATTORNEY AND CLIENT—WHAT CONSTITUTES PRACTICING LAW—PRACTICE WITHOUT A LICENSE.—The defendant was indicted under section 270 of the New York Penal Law which makes it a misdemeanor to practice law in any manner without first being licensed and admitted to practice. The defendant carried on a real estate and insurance business, and drew legal papers, contracts for the sale of real estate, deeds, mortgages, bills of sale and wills. A large sign over the window bore the words, "Notary Public—Redaction of all legal papers." He testified that "redaction" meant the drawing of legal papers. On occasion, he had advised as to the form and kind of instrument to be used and had received pay therefor. *Held*, that the defendant was guilty. *McLaughlin and Hogan, JJ., dissenting. People v. Alfoni* (1919, N. Y.) 62 N. Y. L. J. (Jan. 15, 1920).

The Appellate Division had reversed the conviction by the Court of Special Sessions on the ground that the statute related only to practice connected with court or legal proceedings. In a forceful and convincing opinion in the Court of Appeals, Crane, J., points out that the statute is intended to protect the public, not the bar, and that there is more danger to the public from office practice by an incompetent than from like practice in a court where the proceedings are public and under the control of an experienced presiding official. For a contrary view, see (1918) 31 HARV. L. REV. 886. See authorities collected in Cohen, *The Law—Business or Profession* (1919) Appendix C, 381-393; (1920) 29 YALE LAW JOURNAL, 350.

CONSTITUTIONAL LAW—DUE PROCESS—NECESSITY AND EXPEDIENCY OF CONDEMNATION.—A state statute authorized certain officers engaged in repairing public roads to take earth for that purpose from adjacent lands. Provision was also made for the assessment and payment of damages. The plaintiff sought to enjoin the taking of earth from his land because no hearing was afforded him by the statute respecting the necessity or expediency of the taking. *Held*, that the injunction be denied, because a hearing thereon was not essential to due process. *Bragg v. Weaver* (1919, U. S.) 40 Sup. Ct. 62.

The decision is clearly sound on authority. The legislature is the sole judge of the public necessity which requires or renders expedient the exercise of the power of condemnation. *City of Grafton v. St. Paul, etc., Ry.* (1907) 16

N. D. 313, 113 N. W. 598; see 22 L. R. A. (N. S.) 1, note. And the determination of these legislative questions may be delegated, as in the instant case, to public officers or municipalities who may decide them without a hearing of the owners of the property affected. See *City of Boston v. Talbot* (1910) 206 Mass. 82, 90, 91 N. E. 1014, 1016; cf. *People v. Smith* (1860) 21 N. Y. 595.

CONSTITUTIONAL LAW—POLICE POWER—MUNICIPAL ORDINANCE.—A city ordinance required street railways to sprinkle their tracks when necessary to settle the dust. The defendant was fined for refusal to comply with the statute and applied for a writ of *certiorari*. *Held*, that the writ be denied. *Pacific Gas & Electric Co. v. City of Sacramento* (1919) 40 Sup. Ct. 79.

The court based its decision on the ground that the ordinance was a valid exercise of the police power of the state which was delegated to the city. See *supra*, RECENT CASE NOTES, *sub. tit.*, CONSTITUTIONAL LAW—IMPAIRMENT OF CONTRACT; Ann. Cas. 1912B, 1139 note. It seems that the only limitations on such legislation are that the result desired be practical and that the penalties for non-compliance be reasonable.

CONTRACTS—BROKERS' COMMISSIONS—WHEN EARNED.—The defendant, a Canadian corporation, through the agency of the plaintiff, entered into a written contract with parties in New Foundland for the sale of a British steamship for \$475,000. The purchasers paid \$5,000 at the execution of the contract, and the defendants paid the plaintiff his agreed percentage of the payment. He then sued for his commission on the remainder of the sale price which had not been paid. *Held*, that the plaintiff should recover, because he earned his commission when the contract was signed. *Warner v. Gaston, Williams and Wigmore, Ltd.* (Nov. 13, 1919) C. C. A. 2d, Oct. Term, 1919, No. 8.

The defendants offered in evidence section 39cc of the British Defense of the Realm Regulations which forbade the sale of any ship without the permission of the Shipping Comptroller. The purchasers had no such permission. But as there was no evidence that this would prevent performance of the contract, the court refused to consider the purchaser's failure to obtain permission as an excuse and justification for the defendants' refusal to perform their part of the contract. This case applies under unusual circumstances, the rule that a broker earns his commissions at least when he procures a purchaser ready and willing to buy, with whom the seller enters into a contract. Cf. *Lang v. Hand* (1894) 57 Ill. App. 134; cf. *Alt v. Doscher* (1905) 102 App. Div. 344, 92 N. Y. Supp. 1112; cf. *Knisely v. Leathe* (1915) 266 Mo. 355, 178 S. W. 453.

DECLARATORY JUDGMENTS—DECLARATION OF FUTURE RIGHTS AND DUTIES ARISING FROM CONTRACT—CONSTRUCTION OF WRITTEN INSTRUMENT.—The defendant water company supplied water to company A under various contracts. A in turn supplied this water to the city of Bayonne, New Jersey. In 1917 A assigned its contracts with the defendant company to the municipality, whereupon the defendant refused further delivery of water, on the ground that by the assignment it had been relieved of further performance of its duties arising from the contract. The city thereupon sued for an injunction and for a declaration as to the future rights of the plaintiff and the defendant arising from several of the assigned contracts. *Held*, that the injunction and declaration issue. *Mayor and Council of City of Bayonne v. East Jersey Water Co.* (1919, N. J. Eq.) 108 Atl. 121.

See COMMENTS, *supra*, p. 545.

DECLARATORY JUDGMENTS—DECLARATION OF PRIVILEGE OR ABSENCE OF DUTY.—The plaintiffs were the owners of a vessel which they chartered to the defendants in 1914 for a period of eight years, with a proviso that hire was to cease